MONTANA LEGISLATIVE HISTORY

Chapter 342 19 93

Bill H _____ S 398 Original bill & history ✓ C

H. Committee on Business & Economic Development		S. Committee on Business & Industry	
Hearing Date(s) Mar 15	✓ C	Hearing Date(s) Feb 19	✓ C
_____	___ C	_____	___ C
_____	___ C	_____	___ C
_____	___ C	_____	___ C
Date Out Mar 15	✓ C	Feb 19	✓ C

Did this bill originate in an interim committee? ___ Yes ___ No

Committee _____ Report _____

	TRANSMITTED TO HOUSE		
2/23	REFERRED TO JUDICIARY		
2/23	FIRST READING		
3/09	HEARING		
3/10	COMMITTEE REPORT—BILL CONCURRED		
3/13	2ND READING CONCUR AS AMENDED		
	MOTION FAILED	36	61

SB 398 INTRODUCED BY REA, ET AL.

REVISE LANDLORD/TENANT ACTIONS

2/15	INTRODUCED		
2/15	REFERRED TO BUSINESS & INDUSTRY		
2/15	FIRST READING		
2/19	HEARING		
2/19	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/22	2ND READING PASSED	48	0
2/23	3RD READING PASSED	49	0
	TRANSMITTED TO HOUSE		
2/23	REFERRED TO BUSINESS & ECONOMIC DEVELOPMENT		
2/23	FIRST READING		
3/15	HEARING		
3/15	COMMITTEE REPORT—BILL CONCURRED		
3/27	2ND READING CONCURRED	86	4
3/30	3RD READING CONCURRED	93	7
	RETURNED TO SENATE		
4/03	SIGNED BY PRESIDENT		
4/07	SIGNED BY SPEAKER		
4/13	TRANSMITTED TO GOVERNOR		
4/14	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 342		
	EFFECTIVE DATE: 10/01/93		

SB 399 INTRODUCED BY ECK

ALLOW LOCAL GOVERNMENTS TO LEVY TAX FOR ECONOMIC DEVELOPMENT

2/15	INTRODUCED		
2/15	REFERRED TO LOCAL GOVERNMENT		
2/15	FIRST READING		
2/18	HEARING		
2/19	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/22	2ND READING PASSED	46	3
2/23	3RD READING PASSED	42	7
	TRANSMITTED TO HOUSE		
2/23	REFERRED TO TAXATION		
2/23	FIRST READING		
3/08	HEARING		
3/13	COMMITTEE REPORT—BILL CONCURRED		
3/27	2ND READING CONCURRED	58	31
3/30	3RD READING CONCURRED	63	36
	RETURNED TO SENATE		
4/03	SIGNED BY PRESIDENT		
4/07	SIGNED BY SPEAKER		
4/13	TRANSMITTED TO GOVERNOR		
4/16	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 386		
	EFFECTIVE DATE: 10/01/93		

SENATE BILL NO. 398

INTRODUCED BY REA, WILSON, CHRISTIAENS

IN THE SENATE

FEBRUARY 15, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON BUSINESS & INDUSTRY.
	FIRST READING.
FEBRUARY 19, 1993	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
FEBRUARY 20, 1993	PRINTING REPORT.
FEBRUARY 22, 1993	SECOND READING, DO PASS.
FEBRUARY 23, 1993	ENGROSSING REPORT.
	THIRD READING, PASSED. AYES, 49; NOES, 0.
	TRANSMITTED TO HOUSE.

IN THE HOUSE

FEBRUARY 23, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON BUSINESS & ECONOMIC DEVELOPMENT.
	FIRST READING.
MARCH 15, 1993	COMMITTEE RECOMMEND BILL BE CONCURRED IN. REPORT ADOPTED.
MARCH 27, 1993	SECOND READING, CONCURRED IN.
MARCH 30, 1993	THIRD READING, CONCURRED IN. AYES, 93; NOES, 7.
MARCH 31, 1993	RETURNED TO SENATE.

IN THE SENATE

MARCH 31, 1993	RECEIVED FROM HOUSE.
	SENT TO ENROLLING.
	REPORTED CORRECTLY ENROLLED.

Senate BILL NO. 398

INTRODUCED BY Lila Wilson
Christiaens

A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING A LANDLORD TO DEDUCT CLEANING CHARGES WITHOUT ADVANCE NOTICE IF THE TENANT VACATES WITHOUT NOTICE; REDUCING THE TIME FOR CLEANING BY A TENANT; REDUCING THE DAMAGES FOR WRONGFUL WITHHOLDING OF A SECURITY DEPOSIT; CLARIFYING THE TIME FOR FURNISHING A STATEMENT OF CONDITION OF THE PREMISES AND REVISING THE CONTENT OF THE STATEMENT; AND AMENDING SECTIONS 70-25-201, 70-25-204, 70-25-205, AND 70-25-206, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 70-25-201, MCA, is amended to read:

"70-25-201. Security deposit -- deductions authorized therefrom. (1) Any A landlord renting property covered by this chapter may deduct from the security deposit a sum equal to the damage alleged to have been caused by the tenant, together with a sum equal to the unpaid rent owing to the landlord at the time of such deduction, including rent owed under 70-24-441(3), and a sum for actual cleaning expenses.

(2) At the request of either party, the premises may be inspected within 1 week prior to termination of the tenancy.

(3) No cleaning Cleaning charges may not be imposed for normal maintenance performed on a cyclical basis by the landlord as noted by the landlord at the time the tenant occupies the space unless the landlord is forced to perform this maintenance because of negligence of the tenant. Additionally, no cleaning charges may not be deducted until written notice has been given to the tenant. The notice shall must include the cleaning not accomplished by the tenant and the additional and type or types of cleaning which need to be done by the tenant to bring the premises back to its condition at the time of its renting. After the delivery of the notice, the tenant has 48 12 hours to complete the required cleaning. If notice is mailed by certified mail, service of the notice is considered to have been made 3 days after the date of the mailing. A tenant who fails to notify the landlord of the intent to vacate or who vacates the premises without notice relieves the landlord of the requirement of giving notice and allows the landlord to deduct the cleaning charges from the deposit.

(4) No A person may not deduct or withhold from the security deposit any amount for purposes other than those set forth in this section."

Section 2. Section 70-25-204, MCA, is amended to read:

"70-25-204. Wrongful withholding of security deposit -- action. (1) Any A person who wrongfully withholds a residential property security deposit or any portion thereof

of the deposit ~~shall be~~ is liable in damages to the tenant in a civil action for an amount equal to ~~double the sum determined~~ the sum determined to have been wrongfully withheld or deducted. The ~~attorney's~~ attorney fees may be awarded the prevailing party at the discretion of the court. The burden of proof of damages caused by the tenant to the leasehold premises ~~shall be~~ is on the landlord.

(2) ~~No~~ An action may not be maintained by a tenant for any amount wrongfully withheld or deducted prior to:

(a) the tenant's receipt from the landlord or ~~his~~ the landlord's agent of a written denial of the sum alleged to be wrongfully detained;

(b) the expiration of a 30-day period after the termination of a tenancy;

(c) the expiration of a 30-day period after surrender and acceptance of the leasehold premises; or

(d) the expiration of a 10-day period after the landlord has indicated there were no damages to the premises, no cleaning was required, no rent was unpaid, and no utilities were unpaid by the tenant."

Section 3. Section 70-25-205, MCA, is amended to read:

"**70-25-205. Failure of departing tenant to furnish new address.** Failure by the departing tenant to provide the landlord with ~~his~~ a new address in writing upon termination of the tenancy or upon surrender and acceptance of the

leasehold premises, whichever occurs first, ~~shall relieve~~ relieves the landlord from ~~double~~ liability as imposed by 70-25-204. ~~Such~~ The failure ~~shall~~ may not, however, bar the tenant from recovering the actual amount owing to ~~him~~ the tenant by the landlord."

Section 4. Section 70-25-206, MCA, is amended to read:

"**70-25-206. Landlord to furnish statement of condition of premises at beginning of lease.** (1) Any person engaged in the rental of property for residential purposes who requires a security deposit shall furnish to each tenant, ~~prior to~~ in conjunction with execution of a lease or creation of a tenancy, a separate written statement as to the present condition of the premises intended to be let. At the written request of the tenant, a copy of the written list of damage and cleaning charges, if any, provided to the tenant of the immediately preceding leasehold agreement for the premises in question must be provided to the tenant.

(2) Each written statement of the present condition of a premises intended to be let shall contain at least the following:

(a) a clear and concise statement of the present condition of the premises known to the landlord or ~~his~~ the landlord's agent or which should have been known upon reasonable inspection;

(b) if the premises have never previously been let, a

statement indicating ~~such~~ the fact; and

(c) ~~if--any--damage-to-the-leasehold-premises-resulting from-the-immediately-preceding-leasehold-agreement--has--not been--restored,-a-statement-indicating-such-fact-and-setting forth-such-unrestored-damage;-and~~

~~(d)~~ the signature of the landlord or ~~his~~ the landlord's agent.

(3) ~~Any~~ A person engaged in the rental of property for residential purposes who fails to furnish a tenant, ~~prior-to~~ in conjunction with the execution of the lease or creation of the tenancy, with a separate written statement of the present condition of the premises intended to be let and, upon the written request of the tenant, a written list of damage and cleaning charges provided to the tenant of the immediately preceding leasehold agreement ~~shall-be~~ is barred from recovering any sum for damage to or cleaning of the leasehold premises unless ~~he~~ the person can establish by clear and convincing evidence that the damage occurred during the tenancy in question and was caused by the tenant occupying the leasehold premises or the tenant's family, licensees, or invitees."

-End-

Questions From Committee Members and Responses:

None.

Closing by Sponsor:

Senator Christiaens closed on SB 390.

EXECUTIVE ACTION ON SB 390

Motion/Vote:

Senator Rea moved SB 390 DO PASS. The motion CARRIED UNANIMOUSLY.

HEARING ON SB 398

Opening Statement by Sponsor:

Senator Rea stated SB 398 addressed some of the problems with the Montana Landlord/Tenant Act. He stated SB 398 would clarify the landlord's rights to make the tenant vacate the building. He stated SB 398 would also change the amount of time a tenant is allowed to clean a rental unit upon receipt of notice. He stated SB 398 would change the amount of damages allowable for withholding of the security deposit. Senator Rea stated SB 398 would clarify the time and delivery of the landlord's written report of the condition of the rental premises.

Proponents' Testimony:

Greg VanHorssen, Montana Landlord Association, Income Property Managers Association, stated his associations' support of SB 398. He stated the changes in section 1 would expedite the process of preparing a rental unit for the next tenant when a prior tenant has vacated or will be vacating the premises. He stated the reduction from 48 to 12 hours for the tenant to complete cleaning was in addition to a 3 day period allowed for mailing. He stated the provisions of section 1, page 2, lines 14 - 18 allow the landlord immediate access to a tenants security deposit for cleaning purposes but only if the tenant has not given notice of intent to vacate. He stated the provision addressed the tenant vacating the premises without providing notice and it becoming necessary to clean the premises immediately and prepare it for another tenant. He stated the provision would encourage communication between the tenant and landlord. Mr. VanHorssen stated the changes in section 4 would bring practicality to the statute. He stated is unreasonable to require a landlord to provide every potential tenant with a report stating the condition of the rental premises. Mr. VanHorssen stated section

4, page 5, lines 2 - 5, remove a redundancy in the statute which requires a statement of the current condition of the premises and any statement of damages caused by the preceding tenant. He stated the statement of condition of the premises is to be produced at the beginning of a new tenancy.

Lance Clark, Montana Association of Realtors, stated his support of SB 398.

Melissa Case, Montana Peoples Action (MPA), stated her support of SB 398. She stated MPA had a concern with line 11, page 2 and proposed an amendment to change "12" to "24".

Stan Cloutier, President, Montana Landlord's Association, Kalispell stated he supports SB 398. He stated the 12 hour provision was sufficient since most tenants have given or received a 30 day notice to vacate. He stated the law provides for a 7 day period prior to moving in which the tenant may ask for inspection of the premises by the landlord. He stated the tenant, upon moving, should have the property in condition for the next tenant.

Ed Eaton stated SB 398 would relieve the losses of a landlord's operation and strengthen the business environment. He stated SB 398 would promote the availability of rental housing.

Opponents' Testimony:

None.

Questions From Committee Members and Responses:

Senator Mesaros asked Mr. VanHorssen if a person could hand deliver a notice and still require the tenant to clean the apartment within 12 hours. Mr. VanHorssen stated that was correct, but the majority of notices were sent through the mail. He stated the 12 hour provision was to "streamline" the process.

Closing by Sponsor:

Senator Rea closed on SB 398.

EXECUTIVE ACTION ON SB 398

Discussion:

Senator Mesaros stated he felt the 12 hour provision was too narrow and a compromise should be reached.

Motion/Vote:

Senator Mesaros moved SB 398 BE AMENDED (change "48 hours" to "24 hours"). The motion CARRIED 11 to 2 with Senator Rea and Senator Wilson voting NO.

Motion/Vote:

Senator Mesaros moved SB 398 DO PASS AS AMENDED. The motion CARRIED UNANIMOUSLY.

EXECUTIVE ACTION ON SB 423

Motion:

Senator Klampe moved SB 423 BE TABLED.

Discussion:

Senator Toews asked if SB 423 shouldn't be given a Do Not Pass Recommendation.

Senator Lynch stated he would prefer not pleading his case on the floor because it was time consuming and the issues had been introduced.

Senator Klampe stated the situation occurs in dentistry and medicaid doesn't pay full reimbursement.

Senator Koehnke asked if the private charges were all the same amount. Senator Lynch stated there was a set rate and medicaid sets the low rate.

Senator Rea asked if all of a person's assets are considered when determining if a person would qualify for medicaid. Senator Lynch stated all of a person's assets are considered and spent before the person qualifies for medicaid.

Vote:

The motion CARRIED 9 to 4 with Senators Lynch, Wilson, Bruski-Maus and Kennedy voting NO.

EXECUTIVE ACTION ON SB 420

Motion/Vote:

Senator Kennedy moved SB 420 BE AMENDED. The motion CARRIED UNANIMOUSLY.

SENATE STANDING COMMITTEE REPORT

February 19, 1993

MR. PRESIDENT:
We, your committee on Business and Industry having had under consideration Senate Bill No. 398 (first reading copy -- white), respectfully report that Senate Bill No. 398 be amended as follows and as so amended do pass.

Signed: _____
Senator John "J.D." Lynch, Chair

That such amendments read:

1. Page 2, line 11.
Strike: "12"
Insert: "24"

-END-

Amd. Coord.
Sec. of Senate

411415SC.San

between the law books and the decisions made by the courts. Mr. Petesch found that Montana law was not consistent with federal law in regard to telemetry devices that are placed on the last railroad car instead of using cabooses. He said the courts have found that Montana's requirement of the telemetry device was in violation of federal law and needed to be stricken from the books. He said current federal law does not allow rear-end telemetry devices. But, if the federal law should change then this bill will allow Montana to go back to the use of the telemetry devices without having to go back to the legislature with another bill.

Proponents' Testimony:

Dave Ditzel, Brotherhood of Locomotive Engineers, Livingston, urged the committee's support for SB 249. He said the language in the bill will help correct the inefficiencies that presently exist.

Fran Marceau, United Transportation Union (UTU), said the rear-end telemetry devices are important to protect the citizens and environment of Montana. He would like to see this law remain in effect as much as is permitted by the federal government.

Opponents' Testimony:

None

Questions From Committee Members and Responses:

REP. LARSON asked **Greg Petesch, Legislative Council,** if the federal government permits the telemetry devices on trains, but does not allow the state to require them on trains. He said the reason for the bill is because the federal government in reviewing current safety standards for railroad operations will only require these devices on certain railroad cars.

REP. BRANDEWIE asked **Greg Petesch** what the function is of the rear-end telemetry device? **Mr. Petesch** said it has several functions of which one is the automatic breaking.

Closing by Sponsor:

SEN. YELLOWTAIL said a lot of people had their hearts set on this issue from previous sessions, and it is too bad that federal government can override Montana laws. He urged a do concur recommendation on SB 249.

HEARING ON SB 398

Opening Statement by Sponsor:

SEN. JACK REA, Senate District 38, Three Forks, said SB 398 is a revision of the Montana Landlord/Tenant Act. It addresses

advance notice when a tenant vacates without a notice; it reduces the time for the cleaning by a tenant of a rental unit; reduces the damage for wrongful withholding the security deposit, and clarifies the time for furnishing a statement on condition of the premises.

Proponents' Testimony:

Greg Van Horssen, Income Property Managers and Owners Association, and the Montana Landlords Association, said the two organizations strongly support SB 398. He explained the changes and the reasons for the bill; He said there seems to be a general recognition that the process of removing a tenant from a rental unit has been expanded statutorily and allows too much time if a tenant challenges that system. SB 398 will help the landlord expedite the process of removing a tenant from a rental unit when the landlord had terminated the rental agreement. He said there are five basic issues in this bill: 1) changes the required time for cleaning a rental unit from 48 hours to 24 hours; 2) addresses the tenant vacating the premises and not giving notice without prior notice to the landlord, the landlord then has to clean that property to prepare for the next tenant; 3) changes the amount of allowable damages for the wrongful withholding from double the sum of the amount wrongfully withheld to the sum that was wrongfully withheld. The two organizations feel that the real incentive from wrongfully withholding a person's deposit is the attorney's fees issue, which can amount to $150 to $300 plus; 4) in current statutes, the landlord is to provide the tenant with a report showing the condition of the premises. This report used to be entered into prior to the landlord/tenant agreement, and SB 398 will change that to be done at the same time when the landlord/tenant agreement is entered into; and 5) clarifies redundancy in the statute. It informs the tenant of the condition of the premises and what conditions the unit should be in. The old statute releases the tenant from pre-leasing agreements. This report protects the landlord and it protects the tenant. He urged the committee's support for SB 398.

Lance Clark, Montana Association Realtors, said they concur with the comments made by Greg Van Horssen.

Melissa Case, Montana People's Action, said they support SB 398 and concur with Greg Van Horssen's comments.

Opponents' Testimony:

None

Questions From Committee Members and Responses:

None

Closing by Sponsor:

SEN. REA said this is a fair bill and urged the committee to concur in it.

EXECUTIVE ACTION ON SB 398

Motion: **REP. BRANDEWIE MOVED SB 398 BE CONCURRED IN.**

Discussion: None

Motion/Vote: **REP. BACHINI** called the question. Voice vote was taken. Motion carried unanimously.

Vote: **SB 398 BE CONCURRED IN.** Motion carried 18 - 0.

EXECUTIVE ACTION ON SB 352

Motion: **REP. ELLIS MOVED SB 352 BE CONCURRED IN.**

Discussion: **REP. PAVLOVICH** moved to adopt an amendment. **REP. BRANDEWIE** called the question. Voice vote was taken. Motion carried unanimously.

Motion/Vote: **REP. BRANDEWIE MOVED SB 352 BE CONCURRED IN AS AMENDED.** Voice vote was taken. Motion carried unanimously.

Vote: **SB 352 BE CONCURRED IN AS AMENDED.** Motion carried 18 - 0.

EXECUTIVE ACTION ON SB 249

Motion: **REP. BACHINI MOVED SB 249 BE CONCURRED IN.**

Discussion: **REP. BRANDEWIE** asked if the telemetry device was used in detecting fires. **REP. BACHINI** said the telemetry device is a radio control device. There are two pieces of equipment, one on the engine, and the receiver part is on the rear-car of the train. The device is monitored by a signal that blows air through the train. If this device had been used on the train that crashed by Carroll College, the engineer would have known there wasn't any air in the brakes and would not have disengaged the power from the train. He said Canada has used this device for the last 10 years.

Motion/Vote: The question was called. Voice vote was taken. Motion carried unanimously.

Vote: **SB 249 BE CONCURRED IN.** Motion carried 18 - 0.

HOUSE STANDING COMMITTEE REPORT

March 15, 1993

Mr. Speaker: We, the committee on Business and Economic Development report that Senate Bill 398 (third reading copy -- blue) be concurred in .

Signed: _____
Steve Benedict, Chair

Carried by: Rep. Cocchiarella

Committee Vote:
Yes 12, No 2.

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